

In The United States District Court
For The Northern District Of Texas
Dallas Division

Marguerite Hoffman,	§	
	§	
Plaintiff,	§	
	§	
v.	§	No. 3:10-cv-953
	§	
L&M Arts, Sotheby's, Inc., Tobias Meyer,	§	
David Martinez and Studio Capital, Inc.,	§	
	§	
	§	
Defendants.	§	

NOTICE OF REMOVAL

To the Honorable Court:

1. All Defendants in a civil action initially brought in Texas state court file this Notice of Removal pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. In support of this Notice of Removal, Defendants would respectfully show the Court the following:

2. This case involves the 2007 sale by Plaintiff of a painting by Mark Rothko that is scheduled to be sold at public auction. Plaintiff purports to allege claims for breach of contract, tortious interference with contract, and unjust enrichment, and seeks both money damages and equitable relief.

The Parties

3. Plaintiff Marguerite Hoffman is a natural person who alleges, in accord with Defendants' information and belief, that she is a citizen of Texas.

4. Defendant David Martinez is a natural person who is a subject of the United Kingdom.

5. Defendant Studio Capital, Inc. is a Belize corporation with its principal place of business in Switzerland.

6. Defendant Tobias Meyer is a natural person who is a permanent resident of the United States domiciled in New York, and is therefore a citizen of New York pursuant to 28 U.S.C. § 1332(a).

7. Defendant Sotheby's, Inc. is a New York corporation with its principal place of business in New York.

8. Defendant L&M Arts LLC is a Delaware limited liability company with two members, one of whom is a citizen of New York and the other of whom is a citizen of Switzerland.

The Proceedings in State Court

9. Plaintiff filed this action on May 5, 2010 in the 160th District Court of Dallas County, Texas, Cause No. 10-05417-H.

10. Citation has not been served upon Defendants.

11. Defendants have not filed an answer in the state court action.

12. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b) because the Texas state court action is being removed within 30 days of its being filed, and no Defendant has been served.

Diversity Jurisdiction

13. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1332, because it is a suit between citizens of different States and in which citizens or subjects of a foreign state are additional parties, in which the amount in controversy, exclusive of interest and costs, exceeds \$75,000. Complete diversity exists between Plaintiff and Defendants.

14. Although neither Plaintiff's Original Petition nor her First Amended Petition specifies the amount of damages sought, it is "apparent from the state court petition that the amount in controversy is likely to exceed" \$75,000, exclusive of interest and costs. *Cross v. Bell Helmets, USA*, 927 F. Supp. 209, 212-13 (E.D. Tex. 1996); *see also Marcel v. Pool Co.*, 5 F.3d 81, 84 (5th Cir. 1993). According to Plaintiff's allegations, the painting at issue in this case is worth anywhere from \$18 million to \$40 million, *see* First Amended Petition ¶¶ 24, 41, 50, and, among other damages, Plaintiff seeks all proceeds derived by Defendant Sotheby's from the sale of the painting, *see id.* ¶¶ 72-73. It is therefore apparent from the face of Plaintiff's pleading that the amount in controversy exceeds \$75,000, exclusive of interest and costs.

15. Removal of this action to this Court is proper under 28 U.S.C. § 1441(a) and (b). The District Courts of the United States have original jurisdiction of this action pursuant to 28 U.S.C. § 1332, and no Defendant is a citizen of the State of Texas.

Reservation of Rights and Defenses

16. Defendants reserve all rights and defenses, including the defense of lack of personal jurisdiction.

Requirements of the Local Rules

17. Pursuant to Local Rule 81.1, Defendants are providing the following to the clerk for filing:

- A. a completed civil cover sheet;
- B. a supplemental civil cover sheet; and
- C. this Notice of Removal with each of the following:
 - 1) an index of all documents that clearly identifies each document and indicates the date the document was filed in state court;

- 2) a copy of the docket sheet in the state court action;
- 3) each document filed in the state court action, arranged in chronological order according to the state court file date; and
- 4) a separately signed certificate of interested persons that complies with Local Rule 3.1(c).

Wherefore, premises considered, Defendants give notice of their removal of this case to the United States District Court for the Northern District of Texas, say that the claims asserted should be dismissed, and request such other and further relief to which they may be justly entitled.

Respectfully submitted,

/s/ Gordon M. Shapiro

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Certificate of Service

This is to certify that on May 11, 2010, a true and correct copy of the foregoing, with all attachments, was served certified mail, return receipt requested, to the following attorney of record:

Bart Wulff
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/s/ Gordon M. Shapiro

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